Shepherd Rubenstein

BY EMAIL and RESS

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Our File: EB20220028

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0028– EPCOR EEDO 2023 – Cost Claim Objection Reply

We are counsel to the School Energy Coalition ("SEC"). We have reviewed the objection from the Applicant, EPCOR Electricity Distribution Ontario Inc. ("EPCOR"), to the cost claim from SEC and believe the request should be rejected.

EPCOR objects to certain time claimed by SEC for consultant Jane Scott. Tellingly, it does not base its objection on the belief that the amount of time is objectively unreasonable given the scope and size of the application and SEC's participation. Instead, it argues that the time is "either redundant in light of her assigned areas of responsibility or disproportionate considering the time spent on similar tasks by other intervenors."

We note that comparing the time spent on a given activity with other intervenors is, even under the best of circumstances, a poor indicator of the reasonableness of a cost claim. This is because each intervenor will have a different focus and responsibility. In this case, it makes even less sense to make such comparisons when two of the four intervenors (Environmental Defence and the Small Business Utility Alliance) had a very narrow scope of intervention and interest, especially when compared to SEC. The OEB will also be aware that SEC and VECC, often the only intervenors who engage in all issues in an application of EPCOR's size, utilize their respective expertise to focus on different aspects of the application. Depending on the specifics of any given application, this may result in one spending more time compared to the other, and vice versa in different instances.

With respect to each of the specific objections, we address each one below:

"Time claimed for review of interrogatory responses should be reduced by 5 hours to align with time spent by other intervenors which was consistently around the 3 hour mark."

While SEC cannot speak for how each intervenor classified its time, it cannot fairly be said that spending 8.15 hours (8.9 hours when including Mr. Rubenstein's time) to review more than 200 pages of interrogatory responses, as well as attachments and the re-filing of most of the excel models, is anything but reasonably justified. EPCOR's sole complaint is that it exceeds the time taken by other parties. We cannot comment on how other intervenors allocated and classified their time, but it is not conceivable that an adequate review of that volume of information can be completed in just around 3

hours. In fact, SEC would observe that in many proceedings, considerably more time for this activity is spent, compared to this application.

"Time claimed for settlement conference preparation should be reduced by 75% or 6 hours as this was Mr. Rubenstein's primary area of responsibility and to the best of EEDO's recollection, Ms. Scott was not an active participant at the settlement conference. In addition, a reduction of Ms. Scott's claim for settlement conference preparation would result in SEC's overall time spent on this task being consistent with the total time spent by VECC's two consultants."

"Time claimed for oral hearing preparation should be reduced by 75% or 5 hours as this was Mr. Rubenstein's primary area of responsibility and to the best of EEDO's recollection, Ms. Scott was not an active participant at the oral hearing. In addition, a reduction of Ms. Scott's claim for oral hearing preparation would result in SEC's overall time spent on this task being consistent with the total time spent by VECC's two consultants."

Both criticisms are essentially identical. EPCOR is correct in noting that Ms. Scott was not an active participant in either the settlement conference or the oral hearing. While she did not attend either event, this does not imply she had no role in the preparation for the settlement conference or oral hearing. We are unclear about how Ms. Scott's attendance relates to the amount of time she spent on preparation. In fact, presumably if Ms. Scott had attended, in addition to Mr. Rubenstein, either the settlement conference or the oral hearing, EPCOR would have objected.

As SEC noted in its covering letter, Ms. Scott had primary responsibility for the written discovery process, while Mr. Rubenstein was in charge of the settlement conference negotiations (i.e., attending the settlement conference) and the oral hearing. As part of her responsibilities related to the settlement conference, Ms. Scott assisted in preparing summaries of information, analysis, and recommendations on most aspects of the application for Mr. Rubenstein. Similarly, for the oral hearing, her deep understanding of the written record was crucial in the preparation, and among other things, helped pinpoint which areas needed to be cross-examined and how to approach the various issues. None of the time she spent was duplicative. Had Ms. Scott not participated in these activities, Mr. Rubenstein would have spent an equivalent amount of time (or likely even more) than Ms. Scott undertaking the same tasks.

Furthermore, as discussed above, referencing the amount of time VECC's consultants spent has limited value in assessing the reasonableness of the cost claims. This is especially pertinent regarding the oral hearing, where the OEB will be aware that SEC took the lead among intervenors in cross-examining EPCOR. While this leads to more work, it results in a more efficient hearing and a reduced overall intervenor costs.

SEC submits that its cost claim is reasonable and should be approved.

Yours very truly,
Shepherd Rubenstein P.C.

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Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant (by email)